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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KARLA BOE, and GABRIEL BOE,
individually, and in their capacities as
parents and guardians of minor student,
O.B., and GRACIE BOE, individually,

Plaintiffs,

vs.

MEAD SCHOOL DISTRICT,
Defendant.

Case No.: 23-cv-00319 TOR

STIPULATION AND PROTECTIVE
ORDER

01/16/2024

Without Oral Argument

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection may be warranted.
4 Accordingly, the parties hereby stipulate to and petition the court to enter the
5 following Stipulated Protective Order. It does not confer blanket protection on all
6 disclosures or responses to discovery, the protection it affords from public disclosure
7 and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles, and it does not
9 presumptively entitle parties to file confidential information under seal.
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11 12 2. “CONFIDENTIAL” MATERIAL

13 “Confidential” material shall include the following documents and tangible
14 things produced or otherwise exchanged:
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- 16 (a) All medical and mental health records of the Plaintiffs that would
17 otherwise be confidential under the Health Insurance Portability and
18 Accountability Act of 1996 (HIPAA), including medical and mental health
19 records generated through the course of this litigation;
20 (b) All educational records of the Plaintiffs that would otherwise be
21 confidential under the Family Education Records Privacy Act, (FERPA);
22 (c) All records that include the social security numbers of the Plaintiffs;
23

1 (d) All records that contain private financial information of the Plaintiffs,
2 including bank account information and/or income tax returns;

3
4 (e) All records that contain service member records or official military
5 personnel files;

6 (f) Any records or communication maintained by the Defendant about the
7 Plaintiffs that contain information about other Mead School District
8 Students that would not be subject to disclosures to third parties under
9 FERPA personnel records, trade secret information, personal health
10 information, and educational records subject to FERPA;
11

12 (g) Any portions of personnel files of current or former Mead School District
13 employees.
14
15

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential
18 material (as defined above), but also (1) any information copied or extracted from
19 confidential material; (2) all copies, excerpts, summaries, or compilations of
20 confidential material; and (3) any testimony, conversations, or presentations by
21 parties or their counsel that might reveal confidential material.
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24 However, the protections conferred by this agreement do not cover
25 information that is in the public domain or becomes part of the public domain
26 through trial or otherwise.
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3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that
5 is disclosed or produced by another party or by a non-party in connection with this
6 case only for prosecuting, defending, or attempting to settle this litigation.
7 Confidential material may be disclosed only to the categories of persons and under
8 the conditions described in this agreement. Confidential material must be stored and
9 maintained by a receiving party at a location and in a secure manner that ensures that
10 access is limited to the persons authorized under this agreement.
11

12
13 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the designating party, a
15 receiving party may disclose any confidential material only to:
16

17 (a) the receiving party’s counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the information
19 for this litigation;
20

21 (b) the officers, directors, and employees (including in house
22 counsel) of the receiving party to whom disclosure is reasonably necessary for this
23 litigation, unless the parties agree that a particular document or material produced is
24 for Attorney’s Eyes Only and is so designated;
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1 (c) experts and consultants to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);
4

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the
7 duplication of confidential material, provided that counsel for the party retaining the
8 copy or imaging service instructs the service not to disclose any confidential material
9 to third parties and to immediately return all originals and copies of any confidential
10 material;
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13 (f) during their depositions, witnesses in the action to whom
14 disclosure is reasonably necessary and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
16 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
17 to depositions that reveal confidential material must be separately bound by the court
18 reporter and may not be disclosed to anyone except as permitted under this
19 agreement;
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21

22 (g) the author or recipient of a document containing the information
23 or a custodian or other person who otherwise possessed or knew the information;
24

25 (h) mediators retained by the parties to resolve this matter.
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1 4.3 Filing Confidential Material. Before filing confidential material or
2 discussing or referencing such material in court filings, the filing party shall confer
3 with the designating party to determine whether the designating party will remove
4 the confidential designation, whether the document can be redacted, or whether a
5 motion to seal or stipulation and proposed order is warranted. During the meet and
6 confer process, the designating party must identify the basis for sealing the specific
7 confidential information at issue, and the filing party shall include this basis in its
8 motion to seal, along with any objection to sealing the information at issue. Failure
9 to satisfy this requirement will result in the motion to seal being denied, in
10 accordance with the strong presumption of public access to the Court's files.
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14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.
16 Each party or non-party that designates information or items for protection under
17 this agreement must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The designating party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify, so that other portions of the material, documents,
21 items, or communications for which protection is not warranted are not swept
22 unjustifiably within the ambit of this agreement.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
4 to impose unnecessary expenses and burdens on other parties) expose the
5 designating party to sanctions.
6

7
8 If it comes to a designating party's attention that information or items that it
9 designated for protection do not qualify for protection, the designating party must
10 promptly notify all other parties that it is withdrawing the mistaken designation.
11

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, disclosure or discovery material that qualifies for protection
15 under this agreement must be clearly so designated before or when the material is
16 disclosed or produced.
17

18 (a) Information in documentary form: (*e.g.*, paper or electronic
19 documents and deposition exhibits, but excluding transcripts of depositions or other
20 pretrial or trial proceedings), the designating party must affix the word
21 "CONFIDENTIAL" to each page that contains confidential material. If only a
22 portion or portions of the material on a page qualifies for protection, the producing
23 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
24 markings in the margins).
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1 (b) Testimony given in deposition or in other pretrial proceedings:
2 the parties and any participating non-parties must identify on the record, during the
3 deposition or other pretrial proceeding, all protected testimony, without prejudice to
4 their right to so designate other testimony after reviewing the transcript. Any party
5 or non-party may, within fifteen (15) days after receiving the transcript of the
6 deposition or other pretrial proceeding, designate portions of the transcript, or
7 exhibits thereto, as confidential. If a party or non-party desires to protect confidential
8 information at trial, the issue should be addressed during the pre-trial conference.
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11 (c) Other tangible items: the producing party must affix in a
12 prominent place on the exterior of the container or containers in which the
13 information or item is stored the word "CONFIDENTIAL." If only a portion or
14 portions of the information or item warrant protection, the producing party, to the
15 extent practicable, shall identify the protected portion(s).
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18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the designating party's right to secure protection under this agreement for such
21 material. Upon timely correction of a designation, the receiving party must make
22 reasonable efforts to ensure that the material is treated in accordance with the
23 provisions of this agreement.
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26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS
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1 6.1 Timing of Challenges. Any party or non-party may challenge a
2 designation of confidentiality at any time. Unless a prompt challenge to a
3 designating party's confidentiality designation is necessary to avoid foreseeable,
4 substantial unfairness, unnecessary economic burdens, or a significant disruption or
5 delay of the litigation, a party does not waive its right to challenge a confidentiality
6 designation by electing not to mount a challenge promptly after the original
7 designation is disclosed.
8

9
10 6.2 Meet and Confer. The parties must make every attempt to resolve any
11 dispute regarding confidential designations without court involvement. Any motion
12 regarding confidential designations or for a protective order must include a
13 certification, in the motion or in a declaration or affidavit, that the movant has
14 engaged in a good faith meet and confer conference with other affected parties in an
15 effort to resolve the dispute without court action. The certification must list the date,
16 manner, and participants to the conference. A good faith effort to confer requires a
17 face-to-face meeting or a telephone conference.
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20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
21 court intervention, the designating party may file and serve a motion to retain
22 confidentiality. The burden of persuasion in any such motion shall be on the
23 designating party. Frivolous challenges, and those made for an improper purpose
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
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1 expose the challenging party to sanctions. All parties shall continue to maintain the
2 material in question as confidential until the court rules on the challenge.

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4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
5 IN OTHER LITIGATION

6 If a party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this action as
8 “CONFIDENTIAL,” that party must:
9

10 (a) promptly notify the designating party in writing and include a
11 copy of the subpoena or court order;
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13 (b) promptly notify in writing the party who caused the subpoena or
14 order to issue in the other litigation that some or all of the material covered by the
15 subpoena or order is subject to this agreement. Such notification shall include a copy
16 of this agreement; and
17

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the designating party whose confidential material may be affected.
20

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
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23 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
24 confidential material to any person or in any circumstance not authorized under this
25 agreement, the receiving party must immediately (a) notify in writing the designating
26 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
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1 unauthorized copies of the protected material, (c) inform the person or persons to
2 whom unauthorized disclosures were made of all the terms of this agreement, and
3 (d) request that such person or persons execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.
5

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL
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9 When a producing party gives notice to receiving parties that certain
10 inadvertently produced material is subject to a claim of privilege or other protection,
11 the obligations of the receiving parties are those set forth in Federal Rule of Civil
12 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
13 may be established in an e-discovery order or agreement that provides for production
14 without prior privilege review. The parties agree to the entry of a non-waiver order
15 under Fed. R. Evid. 502(d) as set forth herein.
16
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18 10. NON-TERMINATION AND RETURN OF DOCUMENTS
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20 Within 60 days after the termination of this action, including all appeals, each
21 receiving party must return all confidential material to the producing party, including
22 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
23 appropriate methods of destruction.
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25 Notwithstanding this provision, counsel are entitled to retain one archival
26 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
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1 correspondence, deposition and trial exhibits, expert reports, attorney work product,
2 and consultant and expert work product, even if such materials contain confidential
3 material.
4

5 The confidentiality obligations imposed by this agreement shall remain in
6 effect until a designating party agrees otherwise in writing or a court orders
7 otherwise.
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9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
10

11 DATED: December 13, 2023

s/Lara Hruska
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Counsel for Plaintiffs

16 DATED: December 13, 2023

s/Michael McFarland
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Attorney for Defendant

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
25 production of any documents in this proceeding shall not, for the purposes of this
26 proceeding or any other federal or state proceeding, constitute a waiver by the
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1 producing party of any privilege applicable to those documents, including the
2 attorney-client privilege, attorney work-product protection, or any other privilege or
3 protection recognized by law.
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5 DATED: December 15, 2023.
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Thomas O. Rice
10 THE HONORABLE THOMAS O. RICE
11 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulation
and Protective Order that was issued by the United States District Court for the
Eastern District of Washington in the case of *Karla Boe, and Gabriel Boe, individually, and in their capacities as parents and guardians of minor student, O.B., and Gracie Boe, individually, v. Mead School District*, Case No. 23-cv-00319-TOR.
I agree to comply with and to be bound by all the terms of this Stipulation and
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject
to this Stipulation and Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this
Stipulation and Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____